

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**September 1, 2005**

**PATRICK FISHER**  
Clerk

RICHARD LEE BEAMS,

Plaintiff - Appellant,

v.

GALE NORTON, Secretary of  
Department of Interior,

Defendant - Appellee.

No. 04-3393  
(D.C. No. 03-CV-4072-JAR)  
(Dist. Kan.)

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**ORDER AND JUDGMENT \***

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Before **SEYMOUR, KELLY,** and **MURPHY** Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Richard Lee Beams appeals from district court orders that dismissed his Indian Preference Act (IPA) claim for lack of subject matter jurisdiction and failure to state a claim, *see* 25 U.S.C. § 472, and entered summary judgment on his discrimination and retaliation claims, 29 U.S.C. § 633a; 42 U.S.C. § 2000e-16.

We review a dismissal for lack of subject matter jurisdiction *de novo*. *Radil v. Sanborn Western Camps, Inc.*, 384 F.3d 1220, 1224 (10th Cir. 2004). Whether a private right of action exists is a jurisdictional concern, *Hancock v. Blue Cross-Blue Shield of Kansas, Inc.*, 21 F.3d 373, 374 (10th Cir. 1994), which turns on “whether Congress intended to create the private remedy asserted.” *Southwest Air Ambulance, Inc. v. City of Las Cruces*, 268 F.3d 1162, 1169 (10th Cir. 2001) ( *quoting Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 16 (1979)). As for orders granting summary judgment, our review is *de novo*, *Alexander v. Oklahoma*, 382 F.3d 1206, 1215 (10th Cir. 2004), to determine whether “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c).

After reviewing the parties’ briefs, the record, and the applicable law, we conclude that the district court did not err in dismissing appellant’s IPA claim and entering summary judgment on appellant’s discrimination and retaliation claims.

Accordingly, we AFFIRM the challenged decisions for substantially the same reasons stated by the district court in its July 30, 2004, and September 7, 2004 orders.<sup>1</sup>

Entered for the Court

Michael R. Murphy  
Circuit Judge

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<sup>1</sup> We decline to adopt that portion of the district court's July 30, 2004 decision that examines Beams' IPA claim under Federal Rule of Civil Procedure 12(b)(6) and finds a failure to plead a claim for non-monetary relief under the Administrative Procedure Act. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 101-02 (1998).